IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9205 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUDHIR JILLIYA CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9205 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR DP JOSHI, ASSTT.GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 26.8.2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The

detaining authority has considered three registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses recorded on 22.8.2001 and verified on 24.8.2001 and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. The only ground pressed in service by learned Advocate Mr. Prajapati is that the petitioner was on Police remand when the order was passed, in respect of offences registered at C.R Nos. 1307 of 2000 and 1317 of 2000, whereas he was in judicial custody in respect of offence registered at C.R No. 1422/01. He submitted that the satisfaction recorded by the detaining authority for the urgent need for detaining the petitioner under PASA Act cannot be considered as genuine.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contentions raised before this Court, it is clear that the detenu was in Police remand when the order was passed in respect of two offences, whereas he was also in judicial custody in respect of offence registered at C.R No. 1422 of 2001. Thus it is clear that the detenu was in judicial custody and therefore, the order would stand vitiated on this ground alone in view of the decision of the apex Court in Amritlal and ors. Vs. Union Government, reported in AIR 2000 SC 3675, wherein it is observed that there must be cogent material before the detaining authority for passing the order of detention that the detenu is likely to be released on bail. Inference has to be drawn from available material on record. In absence of any such material, such inference cannot be drawn. The apex Court observed that likelihood of detenu moving an application for bail is not sufficient and it is different from likelihood of the detenu being released on bail. In view of the above decision, which is squarely applicable to the facts of the present case, the petition deserves to be allowed.

6. The petition is therefore, allowed. Order of

detention dated 26th August, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad is quashed and set aside. Detenu Sudhir Jiliya Chhara be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas